IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4542 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI PATEL DEVSHI HARJI & ANOTHER

Versus

STATE OF GUJARAT & ANOTHER

Appearance:

MR CH VORA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/08/2000

ORAL JUDGEMENT

#. The petitioners are aggrieved by an order passed by the Collector, Kachchh at Bhuj on October 9, 1992 in Revision No.57/92 (Annexure-F) passed in exercise of powers under sec.211 of the Land Revenue Code. By virtue of that order, Entry No.491 made in Village Form No.6 of

Taluka Bhuj on April 30, 1982 which was certified on June 3, 1982 came to be dismissed.

#. The facts of the case in nut-shell are that, fore-fathers of petitioner no.3 owned old Survey No.897 paiki Acre-9-Guntha-24 of land. Out of the said survey number land admeasuring Acre-7-Guntha-2 was acquired by the Government for laying railway line. Remaining Acre-2-Guntha-20 of land continued to run in the name of original owners (Bakali Usman Bavwani). This was in the year 1955, at that time petitioner no.3 was also shown to be in possession of the land. Petitioner no.3 in the year 1982 sold this piece of land admeasuring Acre-2-Guntha-20 to petitioner nos.1 and 2 by executing a Regd. sale deed. On the basis of that, the impugned entry was made in the Village Form No.6 on April 30, 1982 bearing No.491. The said entry was certified on June 3, 1982. Thereafter, after a lapse of about 10 years the Collector, Kachchh took this entry in suo motu revision and issued a notice dated May 13, 1992 calling upon the petitioners to show cause, why the entry may not be cancelled ? The petitioners gave a suitable reply to the notice, and after hearing the petitioners, the Collector passed the impugned order cancelling the entries directing the Mamlatdar to hold proceedings under sec.61 of the Land Revenue Code. It is this order which is under challenge in this petition.

#. Mr.Vora, learned advocate appearing for the petitioner assails the order mainly on the ground that the entries in question have been taken in suo motu revision after a lapse of about 10 years. This delay in inordinate and unreasonable. The authority has exercised powers belatedly and therefore, it should be considered as a proceedings initiated beyond limitation. Mr.Vora submitted that the grounds on which the order is passed are also not proper. He has drawn attention of this Court towards the show cause notice and reply thereto, so also the impugned order. The main reason for which the order is passed cancelling the entry is that, by virtue of Entry nos.220 to 358 the land is mutated to the Government and petitioner no.3, therefore, could not have sold the land to petitioner nos.1 and 2. It is also observed that the land is shown to be non-agricultural land whereas, there is nothing to indicate that the land was converted to non-agricultural use. It was observed that the land in question is beyond the city limits.

Mr.Vora submitted that none of these grounds are proper. He further submitted that Entry nos.220 to 358 were made amass on acquisition of land but, if the

learned Collector had examined the notification with annexures, he would have found that this particular piece of land stood in the name of Bakali Usman Bavwani through whom petitioner no.3 acquired title. That notification is produced on record by Mr.Vora. It is further contended by Mr.Vora that the entry challenged by the learned Collector was confirmed by the Dy.Collector. Mr.Vora submitted that it is overlooked by the learned Collector that the impugned entry was made by the City Survey Superintendent while observing that the land in question was beyond city limits. He submitted that even if Annexure-C is examined, Entry No.491 is issued by the Talati of Bhuj City. He, therefore, urged that the impugned order be quashed and set-aside.

#. Mr.Gohil, learned AGP has opposed this petition. He submitted that delay occurs in Government machinery, delay is required to be counted from the date when the authority concerned came to know about such lapses or errors and therefore, in the instant case, it cannot be said that there is a delay. He submitted that there are other grounds also which indicate that the entry has been rightly cancelled by passing the impugned order. He submitted that the petition, therefore, be dismissed.

#. Having regard to rival side contention, the petition can be allowed only on the ground of delay in taking action. There is no time limit prescribed for the action that was initiated by the Collector but, it is equally established by various pronouncements that, when such time limit is not prescribed the powers are required to be exercised within reasonable time. It is also held that, whether the time gap is reasonable or not, has to be decided in facts of each case. About this legal preposition there is no dispute.

#. At the outset it may be noted that, in the instant case admittedly the proceedings are initiated after a lapse of about 10 years, there is nothing to be found wherein an attempt can be said to have been made to explain the delay in taking action. No affidavit is replied to this petition is filed. Under the circumstances, 10 years time gap cannot be said to be reasonable or ordinate. Ten years is a long gap during which new equities may not take place. Petitioner nos.1 and 2 may have developed the property, and such a sudden action at a belated stage would be a bolt from the blue for them. The action, therefore, cannot be sustained and the petition deserves to be allowed on this ground.

#. It requires to be noted that learned Collector

overlooked the fact that the land is shown to be in the name of Bakali Usman Bavwani in the notification as can be seen from the copy produced on record by Mr.Vora. Further, the entry was made and certified after following due procedure. And therefore, the observation of learned Collector appears to be erroneous.

#. Assuming that it was, as it is observed by learned Collector, the question could have been decided after holding a proceeding under sec.37(2) of Land Revenue Code, which is not done and therefore also the order cannot be upheld.

#. For the foregoing reasons, the petition is allowed. Order impugned in this petition passed by the Collector, Kachchh at Bhuj on October 9, 1992 in Revision No.57/92 is hereby quashed and set-aside. Rule is made absolute with no order as to costs.

(A.L. Dave, J.)

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